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HIGH COURT OF CHHATTISGARH AT BILASPUR

(DIVISION BENCH)

Criminal Appeal No.2639 of 2000

Ashok alias Amarnath,

Versus

The State of M.P.

Judgment For Consideration

Sd/-
V.K.Shrivastava
Judge

Hon'ble Shri Fakhruddin, J. :

Sd/-
Fakhruddin
Judge

20.7.2005

POST FOR 26/07/2005

Sd/-
JUDGE
26/07/2005

(39)

HIGH COURT OF CHHATTISGARH AT BILASPUR

(Division Bench)

CORAM : HON'BLE SHRI FAKHRUDDIN, J &
HON'BLE SHRI VIJAY KUMAR SHRIVASTAVA, J.

CRIMINAL APPEAL NO. 2639 OF 2000

Appellant Accused (In Jail)	:	**Ashok alias Amarnath,** son of Shri Hiralal Patari (Pradhan Gond), resident of Village Salaka Manbandha, Police Station – Baikunthpur, District Sarguja (M.P.)
	Versus	
Respondent	:	**The State of M.P.** through the Police Station Baikunthpur, District Sarguja (M.P.)

PRESENT

Shri D.R.Sharma, Senior Advocate with Shri B.D.Badgaiyan, counsel for the appellant.
Shri Akhil Mishra, Panel Lawyer for the respondent/State.

J U D G M E N T

(Delivered on 26/07/ 2005)

Per Vijay Kumar Shrivastava, J.

This appeal is directed against the judgment of conviction and order of sentence dated 19/07/1997 passed by Additional Sessions Judge, Manendragarh in Sessions Trial No.263/96 whereby appellant Ashok alias Amarnath has been held guilty for committing the offence punishable under Section 302 of the Indian Penal Code and has been sentenced to undergo

imprisonment for life and pay a fine of Rs.2,000/- and in default of payment of fine to undergo additional R.I. for 6 months.

2. Deceased Parvati is the wife of accused/appellant, who along with her husband were living in a room taken from Babulal and Foolbai. The room was in the back portion of the house of Babulal and Foolbai. The accused/appellant was suspecting the fidelity of his wife Parvati on the assumption that she had illicit relation with her neighbour Ramsingh. Therefore, very often, they used to quarrel over this issue. On the date of incident i.e. 12-5-1996 around 12.30 P.M., they were quarrelling. Parvati raised voice. Foolbai hearing her voice rushed into the room of the appellant, where she saw deceased Parvati lying in the room and the appellant was standing thereby armed with an axe. Seeing Foolbai there, the appellant attempted to assault her, therefore, Foolbai rushed from there, came to her house, and informed her husband Babulal that the appellant has killed his wife Parvati with an axe. Babulal called Dharmendra and Bholasingh and apprised the fact to them and all the three thereafter went to the appellant's room. They found the room bolted from outside. They opened the door and saw the dead body of Parvati lying inside the room.

3. Foolbai reported the matter to Police. Police recorded Merg intimation, thereafter, Panchanama of dead body was prepared and the dead body was sent to Community Health Centre, Manendragarh for autopsy. From spot, simple earth and blood stained earth were seized. Dehati Nalisi was recorded. Accused was taken into custody. His blood stained clothes were seized. On the memorandum of the appellant/accused, the weapon axe involved in

the offence was recovered and seized at the instance of the accused and statements of witnesses were recorded. On autopsy, Dr.S.K.Chanpuriya and Dr.S.K.Gupta found multiple injuries on the body of Parvati, and expressed their opinion that, the mode of death is syncope due to shock resulting from excessive hemorrhage due to multiple injuries and the death was homicidal in nature. They also collected blood stained clothes from the dead body and prepared two slides of vaginal smear for chemical examination. Blood stained earth, plain earth and clothes of deceased and other articles, clothes of the appellant/accused and axe were sent to Forensic Science Laboratory, Sagar. On chemical examination, blood was found present in blood stained earth, over pieces of bangles, bangles, deceased's clothes, pant of the appellant/accused and over axe. After due investigation, Station House Officer, Manendragarh filed challan in the Court of Additional Chief Judicial Magistrate, Manendragarh, who committed the case to Court of Session for trial.

4. The Additional Sessions Judge, Manendradgarh, framed charge for offence punishable under Section 302 of the Indian Penal Code and read over and explained it to the accused/appellant, who abjured his guilt and claimed to be tried. His defence was that he has been falsely implicated in the case. Learned trial Court after appreciation of the evidence, held the appellant/accused guilty for offence punishable under Section 302 of the I.P.C. for committing murder of his wife Parvati and thereby convicted and sentenced the appellant in the manner as above mentioned.

5. Dr.S.K.Gupta and Dr.S.K.Chanpuriya conducted post mortem and submitted their report i.e. Ex.P-8. Dr.S.K.Gupta, P.W.-7, in his statement deposed that on examination they found following injuries on the body of Parvati : -

(i) an incised wound 5x1x5 cms. red in colour over the chin towards right side directed upwards and posteriorly. On exploration of the wound, there was cutting of the mandible bone along with muscle. Bone was cut in size 3x1x2 cms.

(ii) an incised wound of 4x2x4 cms. red in colour directed upward and posteriorly over the right temple region, clotted blood present over the wound. Underlying maxilary bone was cut, size 3x2x1 cms.

(iii) an incised wound 5x2 cms. extending to the brain directed medially upwards over right temporal region underlying temporal right bone of skull cut size 3x1x1 cms. red in colour clotted blood present over the wound. Brain was exposed through the wound.

(iv) Fracture of right radius and ulna bone at mid-shaft region.

(v) an incised wound 4x2x3 cms. directed medially and downwards over the left side of neck, 5 cms. below the right mastrid process, red in colour, muscles and vessels were cut.

6. Dr.S.K.Gupta, P.W.-7 further deposed that injury No.4 was caused by hard and blunt object, whereas other injuries were caused by hard and sharp object. All the injuries were anti mortem in nature and in their opinion, the mode of death is syncope due to shock resulting from excessive hemorrhage due to multiple anti

mortem injuries and death is homicidal in nature. Nothing substantial has brought in his cross examination to discredit his evidence.

7. Foolbai, P.W.-1 in her evidence deposed that at about 12 P.M., she heard the cry of Parvati, therefore, she went to her room. She saw accused/appellant who had an axe in his hand and Parvati was lying there. Accused/appellant also attempted to assault her with axe, therefore, she ran away from there and informed her husband Babulal that accused – appellant Ashok has killed his wife Parvati with axe. Her husband Babulal apprised the matter to Dharmendra, thereafter she accompanied with Babulal, went to the room of the appellant. The room was bolted from outside. Dharmendra opened the door. They saw Parvati lying inside the room and blood was oozing from her neck. She also saw accused/appellant running from there. Parvati was dead. She lodged report i.e. Ex.P-1. In her cross-examination, she disclosed that Parvati cried that she has been cut by axe. She also disclosed that accused/appellant was standing near his wife Parvati.

8. Babulal, P.W.-2 deposed that around 12 P.M., he was sleeping. Her wife Foolbai came, awaked him and informed him that accused/appellant was chasing her. Accused/appellant has killed his wife. He gave information to Bhagwan Singh and Dharmendra. They all went to the house of the accused/appellant. They saw the room closed and door was bolted from outside. They opened the door and found inside the room that the body of Parvati was lying. Her face, neck and soldiers were injured.

9. P.W.-3, Dharmendra and P.W.-4, Bholasingh deposed that the house of accused/appellant was bolted from outside. After opening the door, they saw the dead body of Parvati lying inside the room. Dharmendra, P.W.-3 also deposed that he came to know from Babulal about the murder of Parvati by accused/appellant.

10. The evidence of Foolbai, P.W.-1, Babulal, P.W.-2, Dharmendra, P.W.-3 and Bholasingh, P.W.-4 does not suffer from any infirmity so as to disbelieve their version. Therefore, from their version, it is established that deceased Parvati and accused/appellant were inside the room at the relevant time when Parvati was injured. Foolbai saw accused/appellant standing near deceased Parvati armed with an axe, who seeing Foolbai, attempted to assault her also. Thereafter, Foolbai also saw accused/appellant running away from there. Inside the room, dead body of Parvati was lying in injured condition.

11. Memorandum statement of accused/appellant is Ex.P-2 and recovery of axe on the memorandum is Ex.P-3. S.R.Dhritlahare, P.W.-13 has recorded the memorandum and the axe on discovery made by the accused has been recovered and seized. In his evidence, he has supported the said fact. Dharmendra, P.W.-3 and Sukaluram, P.W.-9, in their statement, deposed that accused – appellant took Police and others to the place where the axe was found hidden in a pit which was covered by leaves, and at the instance of accused/appellant, the axe has been recovered and seized. Nothing substantial has been brought to discredit the above evidence. From the aforesaid evidence, it is

proved that, an axe has been recovered on the information given by the accused/appellant.

12. Vide Ex.P-5, appellant's clothes have been seized. The seizure has been duly proved by the evidence of Dharmendra, P.W.-3 and S.R.Dhritlahare, P.W.-13. S.R.Dhritlahare, P.W.-13 also proved that all the seized articles were sent to Forensic Science Laboratory, Sagar for examination. Ex.P-17 is the report of Assistant Chemical Examiner, F.S.L., Sagar, wherefrom it is clear that blood was found present over the pant of accused/appellant and axe recovered at the instance of the accused.

13. No one had witnessed accused/appellant inflicting injuries to deceased Parvati. The case completely rests on circumstantial evidence. Hon'ble the Apex Court rendering judgment in the matter of **Vilas Pandurang Patil vs. State of Maharashtra, reported in (2004) 6 SCC 158** in paras 10 to 17 has observed as below : -

> **10.** "It has been consistently laid down by this Court that where a case rests squarely on circumstantial evidence, the inference of guilt can be justified only when all the incriminating facts and circumstances are found to be incompatible with the innocence of the accused or the guilt of any other person. (See *Hukam Singh vs. State of Rajasthan, Eradu v. State of Hyderabad, Earabhadrappa v. State of Karnataka, State of U.P. v. Sukhbasi, Balwinder Singh v. State of Punjab and Ashok Kumar Chatterjee v. State of M.P.*) The circumstances from which an inference as to the guilt of the accused is drawn have to be proved beyond reasonable doubt and have to be shown to be closely connected with the principal fact sought to be inferred from those circumstances. In *Bhagat Ram v. State of Punjab* it was laid down that where the case depends upon the conclusion drawn from circumstances the cumulative effect of the circumstances must be such as to negative

the innocence of the accused and bring home the offences beyond any reasonable doubt.

11. We may also make a reference to a decision of this Court in *C. Chenga Reddy v. State of A.P.* wherein it has been observed thus : (SCC pp. 206-07, para 21)

> "*21.* In a case based on circumstantial evidence, the settled law is that the circumstances from which the conclusion of guilt is drawn should be fully proved and such circumstances must be conclusive in nature. Moreover, all the circumstances should be complete and there should be no gap left in the chain of evidence. Further, the proved circumstances must be consistent only with the hypothesis of the guilt of the accused and totally inconsistent with his innocence."

12. In *Padala Veera Reddy v. State of A.P.* it was laid down that when a case rests upon circumstantial evidence, such evidence must satisfy the following tests : (SCC pp. 710-11, para 10)

> "*10. (1)* the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established;
>
> *(2)* those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused;
>
> *(3)* the circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else; and
>
> *(4)* the circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence."

13. In *State of U.P. v. Ashok Kumar Srivastava* it was pointed out that great care must be taken in evaluating circumstantial evidence and if the evidence relied on is reasonably capable of two inferences, the one in favour of the accused must be accepted. It was also pointed out that the circumstances relied upon must be found to have been fully established and the cumulative effect of all the facts so established must be consistent only with the hypothesis of guilt.

14. Sir Alfred Wills in his admirable book *Wills' Circumstantial Evidence* (Chapter VI) lays down the following rules specially to be observed in the case of circumstantial evidence : *(1)* the facts alleged as the basis of any legal inference must be clearly proved and beyond reasonable doubt connected with the factum probandum; *(2)* the burden of proof is always on the party who asserts the existence of any fact, which infers legal accountability; *(3)* in all cases, whether of direct or circumstantial evidence, the best evidence must be adduced which the nature of the case admits; *(4)* in order to justify the inference of guilt, the inculpatory facts must be incompatible with the innocence of the accused and incapable of explanation, upon any other reasonable hypothesis than that of his guilt; and *(5)* if there be any reasonable doubt of the guilt of the accused, he is entitled as of right to be acquitted.

15. There is no doubt that conviction can be based solely on circumstantial evidence but it should be tested by the touchstone of law relating to circumstantial evidence laid down by this Court as far back as in 1952.

16. In *Hanumant Govind Nargundkar v. State of M.P.* it was observed thus : (AIR pp. 345-46, para 10)

> "It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established, and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused."

17. A reference may be made to a later decision in *Sharad Birdhichand Sarda v. State of Maharashtra.* Therein, while dealing with circumstantial evidence, it has been held that the onus was on the prosecution to prove that the chain is complete and the infirmity of lacuna in the prosecution cannot be cured by a false defence or plea. The conditions precedent in the words of this Court, before conviction could be based on circumstantial

evidence, must be fully established. They are : (SCC p.185, para 153)

> *(1)* the circumstances from which the conclusion of guilt is to be drawn should be fully established. The circumstances concerned must or should and not may be established;
>
> *(2)* the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty;
>
> *(3)* the circumstances should be of a conclusive nature and tendency;
>
> *(4)* they should exclude every possible hypothesis except the one to be proved; and
>
> *(5)* there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused."

14. It is settled that conviction can be recorded on the basis of proved circumstantial evidence, however, to convict a person on circumstantial evidence, it is necessary to examine meticulously whether the circumstances are consistent only with hypothesis of the guilt of the accused and not be explainable on any other hypothesis except that the accused is guilty. It is not necessary that a number of circumstances should exist, if there is only one circumstance which fulfils the above condition that itself will be sufficient to hold the accused guilty and if a number of circumstances are there, then they must form a chain of evidence so complete as not to leave any reasonable ground leading towards innocence of the accused and must show that the offence in all human probabilities has been committed by the accused and none else.

15. Following are the circumstances relied on and proved by the prosecution : -

(i) appellant/accused and his wife Parvati at the time of incident were inside the room.

(ii) hearing the outcry of Parvati, Foolbai came there, who saw Parvati lying inside the room and accused/appellant with an axe was standing by her side, who attempted to assaulted Foolbai.

(iii) Foolbai gave information to her husband, who informed others and when Babulal and others went to the house of accused/appellant, they saw the room bolted from outside. They opened the door and entered inside, where they saw deceased Parvati lying there having various injuries on her vital part.

(iv) Accused/appellant was also seen by Foolbai running from her house.

(v) On the memorandum statement of accused/appellant, the blood stained axe has been recovered and seized, to which no explanation has been given by the accused/appellant.

(vi) The clothes worn by the accused/appellant at the relevant time was also found with blood stains and no explanation has been offered by the accused/appellant.

16. All the above circumstances taken cumulatively form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused/appellant and none else.

17. Learned counsel for the accused/appellant contended that the death of Parvati was a result of grave and sudden provocation, therefore, at the most, the offence against the appellant/accused can fall under Section 304 Part I of the I.P.C. They also placed reliance on a judgment rendered by High Court of Madhya Pradesh in **Gangaram vs. State of M.P., reported in M.P.W.N. 2000(1) S.N. 49.** On fact, the case is distinguishable. The case relied on has fact and material to show that the death was caused due to grave and sudden provocation, but in the instant case, no evidence is on record to show that, at the relevant time, the accused/appellant assaulted his wife, as a result of any grave and sudden provocation.

18. Learned trial Court after duly evaluating the complete evidence very correctly held that accused/appellant is guilty for committing murder of his own wife Parvati and rightly convicted and sentenced the appellant under Section 302 of the I.P.C. The impugned judgment of conviction and sentence does not suffer from any infirmity which may call for any interference by this Court.

19. In the result, the appeal fails and is dismissed.

Sd/-
Fakhruddin
Judge

Sd/-
V.K.Shrivastava
Judge

G.Singh